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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,039

05/06/2005

Paulo Do Rosario

0678-1001

2398

466

7590

06/25/2008

YOUNG & THOMPSON

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EXAMINER

JACYNA, J CASIMER

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

06/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/534,039	Applicant(s) DO ROSARIO ET AL.	
	Examiner J. Casimer Jacyna	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13, 14, 17-24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Ponton 6,089,410. Ponton discloses a dispensing device including a reservoir 12, an ejection assembly 7 that is supported on a wall of the reservoir immediately above 39 in figure 3A, an actuating member 38, and a flexible connecting means 41 wherein connecting means 41 forms a straight vertical band extending from the actuator at 52 directly to the outlet at 9 as shown in figure 3A.

3. Claims 13-20, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Last et al. Last discloses a dispensing device including a reservoir 3, an ejection assembly 5 that is supported on a wall of the reservoir at 3 and 4, an actuating member 14, and a flexible connecting means 11 with female connectors at both ends wherein connecting means 11 forms a straight vertical band extending from the actuator at 7 directly to the outlet at 12.

4. Applicant's arguments filed 3/26/2008 have been fully considered but they are not persuasive. Applicant contends that Ponton and Last do not disclose the connecting means to diverge from a zone. As defined in the specification, Applicants vertical flat band is a flexible circular hose 31 that bends away from a direct straight line connection to the outlet nozzle with a vertical component or height change in addition to the horizontal extension as shown in figure 3. Applicant appears to contend that the term

“zone (B)” infers a structural limitation into the claims. It is noted that the characters in parenthesis do not incorporate any structural limitations into the claims and are completely ignored when considering the scope of the claims. The claims do not identify in words any zone "B", consequently, referring to a zone "B" is meaningless. The only zone clearly defined in the claims is a geometric line directly connecting the actuating member and the outlet member. Ponton clearly discloses a flexible hose 41 that extends from the actuator 52 to the nozzle 9 with a vertical decrease in height as shown in figure 3A wherein as shown in figure 4 and as disclosed on column 6, line 32, to column 7, line 8, the flexible hose will both stretch and contract due to play or rocking in the nozzle and actuator components. As disclosed in columns 6 and 7, when the actuator 52 and nozzle 9 rock toward each other the hose 41 is contracted and thereby forced to scrunch up as shown in figure 4 which contraction will necessary force at least a minute bending of hose 41 away from the geometric line as claimed. This contraction of hose 41 is forming a band with a vertical component that diverges from the defined geometric line as claimed regardless of how small the band or deflection is.

As seen in figure 1 of Last, if one were to draw a geometric straight line connecting the actuator 10 to the outlet member 12 this line would extend through 2 immediately above trigger 14 and because of the curve in the nozzle 2, 13 the flexible hose 11 does deflect away from this line in flat plane or band that does extend in a vertical direction at an angle in excess of 30 degrees (see claims 16 and 25) with respect to the straight line as claimed.

In regard to Applicant's contention that this action absolutely cannot be made final because the claims have not been amended, it is noted that there is no rule or law in existence that says the claims must be amended before a final action is given. Since the claims are being rejected over the exact same two pieces of art used in the first action this action can and is being made final.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/
Primary Examiner, Art Unit 3754

Application Number 	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/534,039	DO ROSARIO ET AL.	
	Examiner	Art Unit	
	J. Casimer Jacyna	3754	